

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	CRIMINAL ACTION FILE
	)	NO. 1:06-CR-147-WSD-2
v.	)	
	)	ATLANTA, GEORGIA
EHSANUL ISLAM SADEQUEE (2)	)	
	)	
Defendant.	)	
_____	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE WILLIAM S. DUFFEY, JR.,  
UNITED STATES DISTRICT JUDGE

Tuesday, March 3, 2009

APPEARANCES OF COUNSEL:

For the Plaintiff:	OFFICE OF THE U.S. ATTORNEY
	(By: David E. Nahmias
	Robert C. McBurney
	Christopher Bly)
For the Defendant:	GARLAND SAMUEL & LOEB
	(By: Donald Franklin Samuel)
	Khurrum B. Wahid

*Proceedings recorded by mechanical stenography  
and computer-aided transcript produced by*  
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1 Tuesday Afternoon Session

2 March 3, 2009

3 3:19 p.m.

4 -- -- --

5 P R O C E E D I N G S

6 -- -- --

7 (In open court:)

8 THE COURT: All right. Good afternoon, everybody.

9 This is a status conference in the United States v.

10 Ehsanul Sadequee, which is Criminal Action No. 06-CR-147.

11 Would counsel please announce their appearances?

12 MR. MCBURNEY: Robert McBurney, along with  
13 David Nahmias and Christopher Bly for the United States.

14 THE COURT: Good afternoon.

15 MR. MCBURNEY: Good afternoon, Judge.

16 MR. SAMUEL: Don Samuel for Mr. Sadequee.

17 MR. WAHID: Khurrum Wahid for Mr. Sadequee.

18 THE COURT: Good afternoon.

19 And good afternoon, Mr. Sadequee.

20 THE DEFENDANT: Good afternoon.

21 THE COURT: There are five things I would like to  
22 cover this afternoon in this status conference. Let me just  
23 list them, and then let me take them up one at time to at  
24 least give you some context for the reasons why I want these  
25 matters addressed this afternoon.

1           The first is, Mr. Sadequee, I got your letter dated  
2           February 23rd in which you asked me a number of questions  
3           about the Speedy Trial Act and what the process is for the  
4           processing of your trial and what you might do to have the  
5           Court reconsider the existing trial schedule. And so I want  
6           to address that.

7           Second, Mr. Samuel sent me a letter on your behalf  
8           on February 24th in which he asked me to look further into  
9           what you had told me at the last hearing, which is what would  
10          be the process and what would be the considerations that you  
11          might have in representing yourself, either by yourself or in  
12          what we legally call a hybrid fashion, which is where you  
13          might do some things and your lawyer might do some  
14          things. And so I wanted to take that up, and that's the  
15          reason why that's on the agenda.

16          My recollection is that, and I have been reminded  
17          by your counsel, that there was an evaluation that had been  
18          done on issues of competency. My understanding is that  
19          that -- I could receive a report on that. I think I need a  
20          report on what the results are on that, because that might  
21          affect the processing of the case. So I want to go over  
22          that.

23          The last time we were together, we talked about the  
24          request to have certain depositions be taken under Rule 15,  
25          and my understanding is that some progress has been made on

1     that. I have gotten a written report on some of that  
2     progress, but I would like an update on where we stand  
3     today.

4             And then finally there was a request about the  
5     conditions of your detention at the federal institution and  
6     some specific things about how you might review evidence and  
7     some contact visits, your access to the phone to make calls  
8     to your lawyers, and then there is I think a food issue. And  
9     I want to take all of those up.

10            Let me begin with some context for the questions  
11     you asked me in your letter about speedy trial.

12            And as you know, I was assigned this case -- or I'm  
13     substituting for Judge Cooper as the successor judge in the  
14     case, and early after the case was assigned to me I began to  
15     look at the docket and began to look at what time would be  
16     required to process the case in order to get you to trial,  
17     and my view was and my desire was to get you to trial as  
18     promptly as possible.

19            I have had one other case involving the Classified  
20     Information Protection Act. It's a difficult process.  
21     Procedurally there are just some things the statute requires  
22     us to do. I understand all those because I had hearings  
23     involving the other case I had in Montgomery, Alabama.

24            So I'm aware of what's required under the statute,  
25     and I'm aware of what all lawyers, whether you are

1 representing a defendant or you are representing the  
2 government, what obligation they have to me to present  
3 information for me to make decisions under the Classified  
4 Information Protection Act.

5 So as I looked at the docket of the case, I had  
6 input from the lawyers for the government and your lawyers as  
7 to what time would be required for them to be able to comply  
8 with their obligations not only to get the case generally  
9 ready for trial, but also to meet the requirements of the  
10 statute that was passed by Congress in providing issues and  
11 information to me to make decisions on how to treat  
12 classified information.

13 I listened to their proposal for the timetable for  
14 it, and my first reaction was couldn't we do it in a shorter  
15 period of time.

16 And so based upon what was presented to me by the  
17 government and by your counsel, I ended up trying to be  
18 objective rather than just rushing through this to say what  
19 really is necessary for the case to be properly processed and  
20 for me to meet my obligations and thus for the lawyers in the  
21 case to meet their obligations to me under the Classified  
22 Information Protection Act.

23 And I ultimately concluded that a schedule along  
24 the lines of what I entered I think it was on November 17th  
25 of 2008 was what was required in order to meet the

1 obligations of the lawyers and my obligation under the  
2 statute and under the rules of court to properly prepare the  
3 case for trial.

4 I did make some amendments to what was proposed to  
5 me, because I thought that there were things that needed to  
6 be changed in order to manage the case in a way that I  
7 thought was most efficient. But I ultimately entered an  
8 order that set the case processing and set due dates and  
9 deadlines to make sure that the case was efficiently and  
10 fairly prosecuted to a conclusion.

11 When I did that, because I have been doing this a  
12 while, I knew what my obligations were under the Speedy Trial  
13 Act, and that I had to keep those obligations and your rights  
14 under the Speedy Trial Act in mind when I decided what the  
15 case schedule should be.

16 As you know, because you said so in your letter,  
17 that there is a guarantee of a speedy trial under 18 U.S.C.  
18 Section 3161. But there are also times within the processing  
19 for a speedy trial that are excluded from the speedy trial  
20 calculation.

21 And when I entered my order on November 17th --  
22 while I didn't do so then, I'm going to do so now -- I did  
23 take into account the factors that are set forth under  
24 18 U.S.C. Section 3161 (h) (7) (A), which is to balance and  
25 only allow a continuance -- and I determined that the

1 schedule really was a continuance of the case because we were  
2 setting a trial date, and that that request for that schedule  
3 was presented to me jointly by your counsel and counsel for  
4 the government.

5 But in deciding whether or not that schedule was  
6 one that was consistent with the rights that are provided  
7 under the Speedy Trial Act, I had to consider whether the  
8 ends of justice were served by allowing the schedule that was  
9 requested, and that the ends of justice being served by  
10 allowing the continuance for a schedule that was presented  
11 outweighed the best interest of the public and the defendant  
12 in a speedy trial.

13 And I found in considering hard the schedule that  
14 was presented that it was in the interest of justice and was  
15 not outweighed by the interests of the public and the  
16 defendant in the speedy trial to set forth the schedule that  
17 I entered in the case in November.

18 When I did that, I evaluated the factors that are  
19 set forth in the statute, and thought that if this schedule  
20 that was proposed and as I carefully evaluated it, that the  
21 continuance was one that was necessary to make sure that  
22 there wasn't a miscarriage of justice, because I thought to  
23 more aggressively force, especially in CIPA-type  
24 presentations, could result in justice being miscarried and  
25 there being mistakes made as to what you would be entitled to

1 under the statutes and the hearings to which you would be  
2 entitled if you wanted to challenge some of the decisions  
3 that had been made in the classification.

4 All of those have to ultimately be decided by me,  
5 and I needed to make sure that the lawyers for the government  
6 and for the defendant had enough time to do that, and then I  
7 had enough time to consider their positions.

8 One of the other criteria is what is the nature of  
9 the case and is it unusual or complex. Of the cases I have  
10 handled, either as a lawyer or now as a judge or even as a  
11 government official, this is one of the most unusual and  
12 complex cases that I have ever handled. So it is out of the  
13 mainstream of cases that normally are presented to the Court  
14 because there are issues here that do not ever arise in other  
15 litigation.

16 So I didn't think, especially given that this was  
17 such an unusual and complex case, that if I did not allow the  
18 schedule that was requested and that I ultimately decided was  
19 the right schedule for the case, I thought that it would be  
20 in the absence of that unreasonable to expect that either of  
21 the parties could adequately prepare for the pretrial  
22 proceedings or for the trial itself if we simply abided by  
23 the statutory speedy trial rules, that there had to be  
24 additional time in order for the case to be justly and fairly  
25 litigated.



1 I also determined that if I did not allow the time  
2 that was being requested by your lawyers, and even at that  
3 time if you were simply representing yourself, I think you  
4 would need the time to prepare the case for an effective  
5 presentation in a case that I have already said is complex  
6 and unusual, even taking into account that I knew that your  
7 lawyers and that you personally were going to exercise due  
8 diligence in getting it ready, but I knew because of my  
9 personal experience and my experience on the bench that  
10 additional time was in fact necessary.

11 Then finally I decided that the continuance -- and  
12 all of these are my findings in allowing the schedule to be  
13 put into place that I put into place, that I wasn't doing  
14 this because there was a general congestion on my  
15 calendar. In fact, there were other times when I could have  
16 tried the case, and I'm not -- I wasn't allowing the  
17 continuance to be ran because I thought that there was a lack  
18 of diligent preparation or failure to obtain available  
19 witnesses on the part of government.

20 I simply concluded for all the reasons I have  
21 stated and for all the findings I have made that what was  
22 being presented to me as I modified it was what was required  
23 to reach a just result, and that ultimately I concluded that  
24 the schedule that was put into place was one that served the  
25 ends of justice and were not outweighed by the interests of

1 the public or you in a speedy trial under the act.

2 So those are the reasons I put that into place, and  
3 I understand now that you would like to revisit that. And  
4 I'm happy to do that based upon where we are in the case,  
5 which I would note is that we are still in the processing of  
6 the case.

7 I know that you have seen the considerable amount  
8 of time that has been required to consider the various  
9 motions that have been filed on your behalf and have worked  
10 through the process that we have in place for the Magistrate  
11 Judge to enter original report and recommendations, and then  
12 we have considered all of those, and we are in the process of  
13 concluding the orders on the motions and the R&Rs that have  
14 been filed.

15 As you know, they have not been short, they have  
16 been lengthy, and I have been personally involved in all of  
17 them because I want to make sure that there is an adequate  
18 review, to include listening to all of the interview tapes  
19 personally and reviewing each and every one of the orders  
20 that were entered allowing searches and interceptions to be  
21 conducted. As you know, there were a lot of those, and  
22 I personally read all of them.

23 So we then are to your letter, which your first  
24 question was: Do I have a right to a trial within sixty days  
25 of arrest?

1           The Speedy Trial Statute entitles you to a speedy  
2 trial, but with certain provisions for time to be excluded  
3 from the calculation of those days. And I have tried to  
4 explain to you why I thought and why I found that the  
5 schedule that was submitted to me that I have in place  
6 provided for a reasonable continuance of the trial according  
7 to the schedule that I entered.

8           You then asked: Is it possible to enforce or  
9 exercise this right of mine?

10           I have in fact gone back and revisited whether  
11 there would be any way for me in good conscience and  
12 consistent with the requirements of the statute to amend that  
13 to now take away time that I had granted to you and your  
14 lawyers to prepare for trial.

15           And I think that that would not be appropriate,  
16 because there are rights that you still have under these  
17 statutes and obligations that I have in evaluating those  
18 rights that are required to be processed according to the  
19 deadlines and the schedule that is in place.

20           And then you asked: Can you exercise your speedy  
21 trial rights? And if so, what steps need to be taken to  
22 enforce the Speedy Trial Act?

23           While this was not in the form of a motion, I have  
24 basically considered your letter as one in which you wanted  
25 me to revisit whether it would be possible to expedite your

1 trial.

2           You know you are the second of two trials. It was  
3 forecasted to me when I got into the case that everybody  
4 believed, although no motion had yet been filed, that the  
5 trials were going to have to be separate. Based upon what  
6 I knew about the case then and what I know of the case now,  
7 I thought that that was going to be required anyway.  
8 Somebody has to go first and somebody has to go second.

9           And they are long trials. They are probably --  
10 I set aside a month for each of the trials with a period in  
11 between to allow the preparation, now that everybody would  
12 know what was presented in the first trial, for the  
13 commencement of the second trial, which is yours.

14           I guess theoretically we could maybe move that back  
15 some period of time and not have what I thought was a  
16 reasonable time and the time that was requested by the  
17 lawyers, which is to have a thirty-day interim period for  
18 everybody to consider what had happened in the first trial  
19 and get prepared for the second trial, that I guess  
20 considering information that might be provided to me by the  
21 government I could see if there is any way of shortening  
22 that.

23           But in all candor, we are only talking about one or  
24 two weeks by which we might collapse the period. And it  
25 seems that if people are getting -- as most lawyers do and

1 most clients do, begin to pace out when you are this close to  
2 a trial, begin to pace out their preparation, I'm not sure  
3 that that would be a meaningful difference or one that would  
4 ultimately serve your purposes.

5 The next question is: What are the obstacles  
6 preventing me from starting the speedy trial clock?

7 Well, the speedy trial clock has started, but there  
8 has been time excluded from that because of the litigation  
9 activity in the case, and I have made my findings as to why  
10 I thought that the schedule that is in place and was put in  
11 place in November was the proper schedule.

12 And for the reasons I have stated here this  
13 afternoon, there are periods of time that are excluded from  
14 the speedy trial clock. Even though it is running, it gets  
15 stopped throughout this process as there is permitted  
16 activity under the statute which is excluded from the  
17 calculation, assuming I reach the opinion, which I have  
18 reached after I applied the criteria that I am required to  
19 apply, that in balancing the interest of justice and the  
20 rights of the public and the defendant that the continuance  
21 is an appropriate one, which I had found it to be.

22 There is probably nobody that understands more your  
23 desire to get this concluded, but there has been a lot of  
24 activity on your behalf to raise issues, all of which from  
25 what I have seen so far were entirely appropriate if not

1 necessary issues to raise and that should have been and were  
2 required for me to address. And that causes this process to  
3 be more extended in a case that's as unusual and complex as  
4 this one.

5 So on the one hand I'm trying to balance what's in  
6 the interest -- what's in your interest in getting the  
7 process concluded against my duty to make sure that the  
8 process is a fair one and in compliance with the statute, and  
9 I have tried very hard to do that.

10 So that's at least my response to the questions  
11 that you have presented. And I'm open to anything else that  
12 you would like me to consider.

13 THE DEFENDANT: I appreciate your response,  
14 Judge. Thank you.

15 Some questions I would like to ask is what are the  
16 obstacles preventing me from starting the speedy trial clock,  
17 which I understand gets stopped for legitimate exclusions?

18 If I understand correctly, you are saying that  
19 based upon your analysis and your evaluation, that it's in  
20 the interest of justice to extend or to give a  
21 continuance. But I would like to point out that it's been  
22 approximately three years since I've been arrested, so how  
23 much more longer -- so at this point in the case, when I ask  
24 to start the clock for 70 days, to get to trial within 70  
25 days, it's not like I'm really getting -- you know, I mean,

1 it's been long overdue. I'm not getting my trial 70 days  
2 after indictment. I'm getting my trial, you know, more than  
3 three years after my indictment.

4 So why can I not at this stage, having all this  
5 time pass and everything that's been filed and all that, why  
6 can't I at this stage, you know, get the speedy trial clock  
7 started, you know, to take 70 days? If my question is  
8 clear?

9 THE COURT: Because the statute provides for a  
10 speedy trial, but it imposes upon me an obligation to look at  
11 it not just from the perspective of somebody who wants a  
12 prompt processing. My obligation is greater than that. It's  
13 to the institution of justice and to the processing of a case  
14 as important as this, to make sure that not only are your  
15 rights protected, but the public's interests are protected,  
16 and that there is adequate time to address the matters that  
17 have to be litigated, which the statute recognizes are  
18 excluded from the time period provided for in the statute.

19 And it's always a balancing between the two  
20 ultimate issues in the statute, which is if you are going to  
21 set a date -- and in this case it's effectively a continuance  
22 that was requested by your counsel, and I think properly  
23 requested based upon everything that I knew at the time that  
24 the request was made -- that I have to look at whether or not  
25 I should change just the simple calendar calculation of the

1 time to trial.

2 Where somebody wants to go beyond that, in order  
3 for me to do that, I have to do this balancing that the  
4 statute by its terms provides, and that is would the ends of  
5 justice be served by allowing the schedule that was  
6 requested, which was basically a continuance beyond a strict  
7 calendar counting. And the continuance should be permitted  
8 if the ends of justice would be served by it so long as it's  
9 not outweighed by the best interest of the public and the  
10 defendant in a speedy trial.

11 All I can say is I have done my very best in trying  
12 to honestly, objectively and fairly look at your interests as  
13 you have stated them to me and as I knew them to be before  
14 you ever sent your letter against what was being requested to  
15 make sure that in a very unusual case that has this overlap  
16 of the Classified Information Protection Act and my  
17 requirements as an officer of the court and as the Court  
18 itself to make sure that those obligations that you have to  
19 the Court and that the Court has to you are met.

20 And that's why -- and as you know by looking at the  
21 schedule, that we are in the process of doing that, that  
22 those -- some of the first filing in that process has been  
23 made. In order to make sure that everybody has the input  
24 that they are entitled to have to me, there are responses  
25 that people are entitled to, and I have to let that process



1 work out according to the mandates of the statute. And it is  
2 an overlay of process that exists only in these kinds of  
3 cases.

4 So I don't think -- you call them obstacles. What  
5 I think the statute does -- and I have tried to apply the  
6 statute in a meaningful and fair way to you and to everybody  
7 involved in the case -- is looking at the general rights  
8 that's set forth in the statute, considering the uniqueness  
9 of this case and the processing required in this case, I have  
10 tried to do this balancing of these interests, and concluded  
11 in November and in looking at the schedule as recently as the  
12 last couple of days to prepare for this still believe that in  
13 order for the rights that the parties have under the statute  
14 to be fully exploited, that it's necessary to have the  
15 schedule that's in place.

16 THE DEFENDANT: If I may ask bluntly a simple  
17 question. I am understanding that you are saying that it is  
18 not possible for me to start the 70-day speedy trial  
19 clock. It's not possible --

20 THE COURT: The 70 days is running. What I'm  
21 saying is that there are certain periods that are excluded  
22 from that. They were excluded from that at the request of  
23 including the people representing you to put into place the  
24 schedule that's put into place, and the statute allows for  
25 the exclusion of time.

1           I think what you are requesting is to say that that  
2           is not a schedule that you like anymore. But the fact is  
3           that the schedule anticipates and requires things the statute  
4           requires that now must be done. And at this stage I think  
5           it's impractical, if not impossible, to say let's do all of  
6           that stuff that the schedule anticipates or let's not do the  
7           stuff.

8           I can't not do it because the statute requires that  
9           it be done. And I can't say, well, let's do it in a shorter  
10          period of time, because the statute requires certain  
11          responses as people identify information that they want to  
12          contest that's been classified.

13          And I know you would like to do that over the next  
14          couple of weeks, but that's not possible.

15          THE DEFENDANT: You mentioned the 70 days is  
16          running but there is exclusions because of things filed by my  
17          counsel.

18          THE COURT: Yes.

19          THE DEFENDANT: You are referring to the CIPA  
20          proceedings?

21          THE COURT: And motions that have been filed.

22          THE DEFENDANT: I have spoken to my lawyers about  
23          that, and I am willing to withdraw whatever is filed from my  
24          side of the case, my counsel, which is hindering the speedy  
25          trial clock.

1 I spoke with them and I told them whatever is  
2 hindering the clock from my side of this case, I am willing  
3 to withdraw it if it will in fact help.

4 THE COURT: Let me give you a status report. There  
5 are two motions that I have yet to issue orders on. One of  
6 those motions is being reviewed and I think will be approved  
7 and issued today or tomorrow. The other has been drafted,  
8 I'm finalizing it, and I suspect that it will be entered next  
9 week.

10 So as a practical matter, we have already invested  
11 the enormous amount of time that was required to address each  
12 of the pending motions. And unless something happens that I  
13 don't anticipate, all of the pending motions will be decided  
14 by the end of next week.

15 So that's really not holding up anything, because  
16 we have already done the work on those.

17 THE DEFENDANT: So then if I understand correctly,  
18 the only thing holding it up is the CIPA procedures -- or the  
19 CIPA?

20 THE COURT: Right.

21 THE DEFENDANT: And I also discussed that with my  
22 lawyers.

23 And could you summarize what we talked about?

24 MR. SAMUEL: What Mr. Sadequee asked us,  
25 Your Honor, is to withdraw any motions that we filed pursuant

1 to CIPA.

2 I have described the Speedy Trial Act in slightly  
3 different terms than you have. What I have said in essence  
4 is that we have the 70-day period, but the clock in essence  
5 has been stopped ever since the first motion was  
6 filed. There never has been a period of time during which  
7 the clock, any days have gone by.

8 THE COURT: Well, not meaningfully. I mean,  
9 technically it does start, but then it immediately stops.

10 MR. SAMUEL: It's terminology.

11 THE COURT: Right.

12 MR. SAMUEL: Judge Brill in fact within a few weeks  
13 of beginning of trial, Docket No. 55, declared the case  
14 complex, and in our metaphorical way, the clock never started  
15 at that point.

16 So the way I have been discussing it with  
17 Mr. Sadequee in the last couple of weeks is, you know,  
18 envision a clock, that the 70 days, we haven't started  
19 counting any days off yet because the motions have just never  
20 allowed the clock to start ticking.

21 And then Document 55 having declared it complex,  
22 even if all motions suddenly were done, in theory, you would  
23 have to make a finding to start the clock, it's no longer  
24 complex, we should start the 70 days, if you were so  
25 inclined.

1           So what I have said to Mr. Sadequee is in order to  
2 trigger the statutory 70-day period -- and I don't advocate  
3 this, but in order to do it, we would have to withdraw all of  
4 our motions so that nothing is stopping the clock under  
5 section (f), I think, and under (h) (8) you would have to say  
6 it's no longer complex, it's no longer in the interest of  
7 justice to stop the clock and grant a continuance.

8           Then we have the issue of the government motions,  
9 which in my understanding of the act, at least to some extent  
10 the government's motions stop the clock. To which  
11 Mr. Sadequee said, well, let's just agree to all those  
12 motions. I'm not advocating this, but these are our  
13 discussions. I don't want to waive any privilege, needless  
14 to say.

15           And I think what Mr. Sadequee wants -- and I  
16 certainly understand it, he's spent a long time in prison in  
17 really intolerable conditions to some extent -- anything we  
18 can do to expedite the trial including, by the way, swapping  
19 places with Mr. Ahmed, if our trial could go first rather  
20 than his trial.

21           I think some of our motions are important. I think  
22 declassifying information is important. But this is  
23 Mr. Sadequee's case, not my case, and I think he's making a  
24 voluntary, intelligent decision, although one I wouldn't  
25 make, to stop the motion practice. That you are going to

1 grant the government's motions in all likelihood anyway, he  
2 views it that way. To the extent we are seeking to  
3 declassify additional information that maybe won't get  
4 declassified, so be it.

5 That's the way Mr. Sadequee views it, and I hope  
6 he's okay with me articulating it. And the question is  
7 having done all that, can we speed it up, can we have a trial  
8 in May, can we have a trial even as early as, you know, late  
9 April or something, or swap with Mr. Ahmed, as I said, who  
10 doesn't seem to be as earnest about wanting to go first.

11 Is that fair?

12 If today the clock started, again my metaphorical  
13 clock started, we stop all motions, we concede all the  
14 government's motions with regard to CIPA, we agree with all  
15 their substitutions, there is no reason for a motion  
16 practice, there is no reason to litigate those issues, can  
17 the Court make a determination that we are no longer in the  
18 realm of complex cases --

19 THE COURT: No, I could never do that.

20 MR. SAMUEL: I know, I'm just putting forth our  
21 argument.

22 -- and start this trial as soon as possible?

23 THE COURT: I mean, I agree with everything  
24 Mr. Samuel has said about we have looked at it different  
25 ways. I guess that's because he's an advocate and I'm a

1 neutral.

2 But if you step back, as a practical matter, I  
3 don't see why anybody would want to give up their rights to  
4 have motions decided, to assert rights that they have under  
5 the CIPA statute, when effectively we are only talking about  
6 a very short period of time that could be saved.

7 I don't know why you would want to do that, and  
8 I think that it would be something that if I was you, I would  
9 never want to give up for a short collapsing of the time that  
10 you would get to trial.

11 Now, the one thing I do agree with -- and I'm glad  
12 the marshal is here -- is that we ought to have a discussion  
13 about your detention and what I think you are entitled to do  
14 and access that you are entitled to have, which I believe in  
15 the end of this either everybody will agree will be different  
16 or I will order it to be different.

17 Because especially now as you are getting ready  
18 with your lawyers to try the case, that you are entitled to  
19 things which I want to make sure that you have. And that's a  
20 little longer down the list, but that is going to change.

21 I don't know if you know this, but when you had the  
22 incident in prison and I found out about it, I ordered the  
23 warden and the marshal to appear in my chambers and told them  
24 that I would not put up with that. That I wanted to know  
25 exactly what happened, I wanted to know why it happened, and

1 I told them that it should not have happened and it will not  
2 happen again.

3 And I told them and they know that I have a  
4 personal ongoing continuing interest in what's going on in  
5 your detention, and now that I have some additional  
6 information about changes, like I have done in one other  
7 case, I have told the warden that the conditions will be  
8 different, and they will be different for you.

9 And hopefully that will give you more of an ability  
10 to participate and to prepare for what is going to be a very  
11 important time for you where you ought to be -- your  
12 paramount interest I would hope is that you want to make sure  
13 that every right that you have is raised and that every right  
14 that you have to a ruling from me is asserted and that you  
15 get ruling from me, so that you have a complete exercise of  
16 your right to trial and your right to effective assistance at  
17 trial and that you have a proper record of the proceeding so  
18 that all legal issues that you want to raise are in fact  
19 raised and preserved.

20 And to me, if I was you, I would absolutely want  
21 that, and I would not give up a short period of time just  
22 because you want to get to trial quicker. Because I think  
23 that that is clearly outweighed by your personal interest and  
24 I think the interest that your lawyers have that all of your  
25 rights be fully asserted and that you get every right to



1 which you are entitled.

2 THE DEFENDANT: The reason I want to hasten the  
3 process or I want to activate the speedy trial clock is not  
4 merely because I want to have the trial quicker. There are a  
5 number of reasons, all of which I don't think I can get into  
6 right now. But it's partially due to, as you have mentioned,  
7 I was assaulted on October 28th, last year, 2008, and I -- a  
8 series of things have happened since which I believe was  
9 government-orchestrated, although they will deny it, which is  
10 understandable.

11 There is a number of reasons -- which if you want  
12 me to, I can get into right now, otherwise perhaps it's not  
13 the best time -- for which I do -- I want to get to trial as  
14 soon as possible.

15 I know that's a vague answer, but I do want to make  
16 it clear that it's not just because -- as you mentioned, it  
17 is a short period of time if I can get to trial within 70  
18 days from now as opposed to in August, but it's much more  
19 than that. I mean, it's not merely because I want to get to  
20 trial faster.

21 THE COURT: What's the government's response to  
22 swapping the trials?

23 MR. MCBURNEY: Judge, as you noted, there was a  
24 pretty clear likelihood that we were going to need to sever  
25 the two, and they are now formally severed by being in

1 different indictments.

2 The government's position has been consistent all  
3 along, initially with Judge Cooper, and now with Your Honor,  
4 that Ahmed should go first for a variety of reasons.

5 But first, because the schedule is in place and  
6 Ahmed is going first, we have already begun to line up  
7 witnesses who would testify only in the Ahmed case to be  
8 there. Those are not insurmountable logistical hurdles, but  
9 the schedule has now been in place for three, four, five  
10 months, and we have begun to plan accordingly.

11 But secondly, in terms of the ends of justice, it  
12 is expected that Defendant Ahmed would be compelled to  
13 testify if he did not take the stand voluntarily in the case  
14 against Defendant Sadequee, hence the severance, because of  
15 his statements that he gave.

16 That becomes an exceedingly complex endeavor if  
17 Defendant Sadequee goes first. We would have to have an  
18 entire *Kastigar* team to be in court for Defendant Ahmed's  
19 testimony against Defendant Sadequee while the team that  
20 would be taking the rest of the case would be effectively  
21 walled off during the trial and in preparation, et cetera.

22 So in terms of the government being able to set  
23 forth the case that it is entitled to set forth, the ordering  
24 was not coincidental, Defendant Ahmed's case first, and then  
25 he can choose to testify willingly or in a much cleaner

1 fashion be immunized and compelled to testify in the second  
2 case, which would be Defendant Sadequee.

3 As you pointed out, the trials are not a year  
4 apart. There may be some slight ability to bring them closer  
5 together if the case in Ahmed's case ends on time.

6 But for less important but not inconsequential  
7 logistical reasons, we have already begun to line up the  
8 witnesses and sent out subpoenas for the Ahmed trial starting  
9 in January. But the more --

10 MR. SAMUEL: June.

11 MR. McBURNEY: I'm sorry, June.

12 But the more serious and in some ways  
13 insurmountable issue that Sadequee would not be called to  
14 testify against Ahmed, but Ahmed would be called to testify  
15 against Sadequee, that ordering was intentional.

16 THE COURT: Well, let's do this. The nature of  
17 your letter which I wanted to respond to today and what I  
18 hear you saying today is that you would like for me to enter  
19 a formal ruling on a motion that you would like to make under  
20 the Speedy Trial Act.

21 If in fact after this discussion you want to make a  
22 formal motion to me under the Speedy Trial Act, then I will  
23 give you until the end of next week to submit any other legal  
24 authorities or analysis of the statute that you would like to  
25 make, I will give the government ten calendar days to respond

1 to that, then I will give you five calendar days to reply to  
2 their response, and then I will enter an order on your  
3 motion, so that that will be a matter of record, everybody  
4 will have their say legally under what the Speedy Trial Act  
5 requires or obligates me to do, in addition to the rulings  
6 and the findings I made here today and announced today.

7 And I'm willing to do that because it seems to me  
8 that if in fact you are now asking for a formal ruling, that  
9 I have an obligation to let everybody have their say and to  
10 follow the regular process, although I'm collapsing the  
11 amount of time that's required for the briefing to be done.

12 So if you would like to do that, I will look  
13 forward to receiving your motion next Friday. And the sooner  
14 you get it in, the sooner it would be processed because the  
15 time -- the ten days will run from whatever time he files the  
16 motion.

17 All right. The next issue then would be  
18 Mr. Samuel's letter on your behalf to look further into your  
19 desire to participate in your trial.

20 So I'm open to hearing what else you would like to  
21 say about that in addition to what we talked about last  
22 time.

23 THE DEFENDANT: Well, as I have spoken with my  
24 lawyers, they have told me that I can ask -- I have a right  
25 to go *pro se*, and there is the possibility if the Court

1 grants that I can go for hybrid.

2 And with regards to that, what choice I would make,  
3 I need to first get some clarity on prior to trial, from now  
4 till trial, what's the difference in our, meaning my lawyers'  
5 and I, our roles in the case in going hybrid as opposed to  
6 going *pro se*? If my question is clear?

7 THE COURT: Well, let me give you kind of the two  
8 scenarios.

9 If you were to go *pro se* and your lawyers were  
10 simply -- and the jury would know that you are representing  
11 yourself, but you would have the obligations to represent  
12 yourself and you would have the duty to do what's necessary  
13 to represent yourself but to have your lawyers available  
14 likely as consultants.

15 But that would mean, for example, that it would be  
16 your job and only your job unless you happen to think to  
17 consult with your lawyers that if the government introduced a  
18 piece of evidence and you did not object to that, even though  
19 you had a valid legal objection, that objection would be  
20 waived, because you elect to represent yourself.

21 And that's why it's I think extremely important  
22 that you think seriously about whether you would want to run  
23 that risk, that you would be responsible -- I have been doing  
24 this 30 years, and this is -- I have this at the ready for me  
25 because I know this book, this is about all the Rules of

1 Evidence and a synopsis of all the cases that are germane to  
2 the Rules of Evidence. It has all -- I mean, what are there,  
3 a hundred Rules of Evidence, which I have taken 30 years to  
4 learn and still need a book.

5 But if you represent yourself, if they try to  
6 introduce evidence, and even if they did it in good faith,  
7 but you would have a legal right to object to it and I would  
8 have the obligation to consider it and say it's not  
9 admissible.

10 If you don't make that objection, that evidence  
11 comes in, and you wouldn't have -- generally would not have a  
12 right on appeal to contest my ruling because you didn't  
13 object to it. In fact, I wouldn't make a ruling; it would  
14 just come in.

15 And that's why it's so unusual, highly unusual for  
16 somebody to say that they want to represent themselves.

17 Now, there is authority to allow a hybrid, which in  
18 loose terms would mean that you would share responsibilities.  
19 But before I decided whether I will permit that and in order  
20 for me to properly make sure that the case is conducted in a  
21 way that is fair, I would require you to tell me what exactly  
22 the hybrid would look like.

23 For example, there are some -- I know of one case  
24 where a defendant wanted a hybrid relationship, but that's  
25 because they wanted to question two witnesses, and it was

1 clear going forward what the lawyer was supposed to do and  
2 what the client was going to do.

3 And so, you know, I would not exercise my  
4 discretion to say you are hybrid, do whatever you want, and  
5 sit here every day not knowing who is going to be responsible  
6 for what. So you would have to have a discussion with your  
7 lawyers if you wanted to propose to me for me to exercise my  
8 discretion to permit it so that I would know when I'm making  
9 my decision what exactly I'm allowing.

10 So you would have to say here is what my  
11 responsibilities are going to be, here is what my lawyers'  
12 responsibilities are going to be, so that at any point in  
13 time I could say, oh, this is something that Mr. Sadequee is  
14 going to do or this is something that Mr. Samuel or Mr. Wahid  
15 is going to do.

16 But I would -- before I would approve that, I would  
17 require specificity as to what you wanted.

18 THE DEFENDANT: If I can get hybrid, in terms of in  
19 court or at trial, I would definitely intend to interview  
20 witnesses. I don't know which witnesses or experts or who  
21 the government intends to bring, but some of the individuals,  
22 such as the FBI agents, I would like to interview them or  
23 cross-examine them. I also perhaps would make some  
24 statements in the opening statement or closing statement.

25 And as to prior to trial, as in from now to trial,

1 whatever procedures or anything related to this case, I would  
2 want to be -- for example, as of now -- I mean, till now, my  
3 lawyers have been filing motions, you know, just normal  
4 procedural stuff, sometimes or usually without my notice,  
5 which is okay, like to dismiss Count One, motion to dismiss  
6 that.

7 But if I do go hybrid, prior to trial, whatever  
8 takes place within this case, I would want to be -- I would  
9 like to have the final say instead of my lawyers having the  
10 final say. I mean, that's prior to trial.

11 Now, at trial I would just want to interview some  
12 witnesses and have some statements, and the rest, you know, I  
13 would leave it up to my lawyers.

14 THE COURT: All right. I am going to give you --  
15 do you have a calendar, please?

16 Because I don't really understand what you are  
17 asking, I'm going to give you -- today is March 3rd -- you  
18 have until the 27th to file a motion with the Court  
19 specifying what exactly you are requesting me to decide, and  
20 if what you are really talking about is a hybrid  
21 relationship, you need to specify who is going to be  
22 responsible for what, so that I know when I consider your  
23 request that I know specifically what you are considering.

24 Then I will give the government until April 13th to  
25 respond. And then if you want to reply, then you should file



1 your reply by the 20th of April.

2 So you will know late April, early May, what my  
3 decision is on whatever the request is that is set forth in  
4 your motion.

5 MR. SAMUEL: Just briefly, because he and I have  
6 talked about this too, and maybe I can explain it better. He  
7 does want to do hybrid at trial, and we will do our best to  
8 identify the witnesses or proceedings that he wants to handle  
9 at trial.

10 His concern is between today and trial having kind  
11 of veto power over what gets filed and what doesn't get  
12 filed.

13 And what I have said to him is we have pretty much  
14 for the last two or three years done this as a team, if you  
15 will. We argue. There is some times he's asked me to do  
16 things and I said I think that's a terrible idea and I don't,  
17 and I go back the next time to visit him and he says I really  
18 want you to do it. And usually I do it. I mean, I don't  
19 think we have ever come to the point where he has said do  
20 something and I have said no and that's the end of it. And  
21 I said we will probably continue that process.

22 As a matter of law and ethics and whatever other  
23 source of law there is, I do have veto power over motions  
24 that get filed, the wording of the motions. I'm never going  
25 to do something that he asked me to do that's unethical. He

1 never has. I'm never going to do anything that misrepresents  
2 anything to the Court. He's never asked me to.

3 There have been times he's asked me to file motions  
4 that I think are frivolous, if you will, just because I  
5 have -- maybe because I have tunnel vision and it may be that  
6 he has got a better view of things, and occasionally I have  
7 even filed those motions. I'm not going to identify them for  
8 the Court at this time.

9 And I said on a go-forward basis we will continue  
10 that way, and we will comply with your direction to file  
11 something. It may be -- just to kind of give you a  
12 heads-up -- what we ought to do is continue in that  
13 process. He obviously feels free to write to you, and he  
14 should continue to do so. And if he thinks I'm not doing  
15 something that he wants me to do, he should alert the Court.  
16 If he think I've done something he doesn't want to happen,  
17 the same thing.

18 Our concern -- his concern is between now and the  
19 first day of trial, what does it mean that you have agreed to  
20 do hybrid. Once we get to the first day of trial, we know  
21 what hybrid means.

22 THE COURT: Well, I think that you have sort of an  
23 informal hybrid already.

24 I think what Mr. Samuel has said is he does have  
25 obligations to the Court and to his profession and to the

1 justice system, and there are certain things he can't do even  
2 if you directed him to do it.

3 And I think that happens -- I mean, that happened  
4 to me when I was representing clients, we also had this  
5 discussion. They might want to do something, I wouldn't  
6 think it's in their best interest, and we would have long  
7 discussions, often very robust discussions about that, and at  
8 the end of the day I would make my recommendations.

9 And if they said, no, I want you to do something,  
10 and it was ethical for me to do it, even though it was  
11 against my better judgment, I generally deferred to the  
12 client.

13 It sounds to me like that's what you are  
14 doing. But what you ultimately -- and I think what  
15 Mr. Samuel is proposing is that if there was something that  
16 you insisted that he do and he was unable professionally to  
17 do it, that he would ask you to say that that doesn't  
18 preclude you from sending and filing something for me to  
19 consider.

20 And so far I think everything that you have  
21 submitted has been polite and appropriate and I suspected  
22 that it wasn't always something that Mr. Samuel agreed with,  
23 but I haven't been offended by what I have gotten. And in  
24 fact, I understand what your position is and have tried to  
25 appreciate what your circumstances are.

1 But there might be a time when you presented  
2 something to me outside of what Mr. Samuel is filing that I  
3 would probably write back and say it's improper to do that, I  
4 can't consider that, but I would let you know.

5 And it seems to me that that gets you what you  
6 want, it gets you say if something -- if you ever had a  
7 conflict with your lawyers, if you insisted that they do  
8 something or if you insisted they not do something, that I'm  
9 offering you this independent channel to file something with  
10 me directly.

11 And if it's not something that is appropriate, I  
12 will understand that you are a *pro se* litigant, I will let  
13 you know that in an appropriate way that what you want me to  
14 do is either something I can't do or if you want me to do  
15 something, I will tell you I can't do it.

16 THE DEFENDANT: Would it be possible for me to, as  
17 my lawyer explained, so that till trial I have veto power,  
18 that till trial, I'm considered *pro se*, and then at trial I  
19 would take hybrid?

20 THE COURT: I'm not inclined to do that, because I  
21 don't know -- I don't know of any you get to be *pro se* during  
22 one part and hybrid during another part.

23 I mean, if you want to do that, you may file a  
24 motion and I will consider it, but I'm not going to decide  
25 that now. Because, one, this is an evolving discussion. I'm

1 really not quite sure what you want.

2 But if you want me to formally consider something,  
3 I'm going to have the government have the right to respond to  
4 that, and then I will decide it in a written order so that  
5 the record is clear as to what you want and what I'm allowing  
6 or disallowing.

7 And if you are going to file that, you probably  
8 ought to file that by the end of next week, which would be  
9 March 13th. Same ten days to respond to that, and five days  
10 if they want to reply.

11 MR. McBURNEY: And, Judge, for clarity purposes,  
12 this wouldn't be the defendant's request for hybrid  
13 representation where he's identifying who is doing what?  
14 This would be --

15 THE COURT: My understanding is that he wants to  
16 have two different relationships, and that what he wants is  
17 between now and trial, he wants to be *pro se*.

18 MR. McBURNEY: No relationship.

19 THE COURT: No relationship, meaning that  
20 Mr. Samuel would be off the hook.

21 But I want that in the form of a motion because  
22 I think, one, I'm not sure I can do that; and second, I want  
23 to be more thoughtful about my response to that, because it  
24 is not clear to me that I can do that and I'm not going to  
25 decide that today.

1           THE DEFENDANT: Being *pro se*, I'm still allowed to  
2 have counsel. I'm out of court; right? I'm still  
3 communicating with my lawyers.

4           THE COURT: If you are *pro se*, Mr. Sadequee, you  
5 could not ever talk to your lawyer if you don't want to. So  
6 I'm not going to define your relationship with your  
7 lawyer. You are going to have to do that.

8           What you are saying is you ultimately want the  
9 authority between now and trial if you so choose never to  
10 talk to your lawyers and to solely represent yourself and do  
11 what you think is consistent with the law, the Rules of  
12 Procedure and in your interest.

13          And what you are asking me to do -- because, you  
14 know, I'm not the monitor of your representation. I can't  
15 call you every week and say how is it going with your  
16 lawyer.

17          The law says that there are certain things that you  
18 are entitled to do. What I want you to do is to articulate  
19 to me in writing because I can't get a clear picture today,  
20 and then I will do the legal research required with the  
21 assistance of whatever anybody wants to submit to me, and  
22 then I will make a legal ruling so that if in fact you end  
23 up not -- that should I allow you to be *pro se* in this  
24 changing way in which you want to go through this trial, that  
25 it will be clear that whatever mistakes are made are your

1 mistakes. But that's going to be in writing and you are  
2 going to get a thoughtful order from me outlining what the  
3 law is and what I allow.

4 So I think we have got the schedule for those two  
5 issues. The next question would be to receive the report on  
6 the evaluation.

7 MR. SAMUEL: Your Honor, this was not a competency  
8 evaluation in terms of whether Mr. Sadequee is competent to  
9 proceed to trial. We have never questioned that.

10 We engaged the services of a psychiatrist --  
11 I wanted to make sure he's a psychiatrist, not a  
12 psychologist -- but a psychiatrist to evaluate his condition  
13 based on his confinement and the duration of his  
14 confinement.

15 And we have received that, and based on the  
16 evaluation we now want to bring to the Court's attention some  
17 confinement issues.

18 So it was not -- it never was a competency  
19 issue. I never thought Mr. Sadequee was not competent to go  
20 to trial. He's always coherent with me, coherent with the  
21 Court. So that's not the issue. The issue was more --

22 THE COURT: Mental health well-being?

23 MR. SAMUEL: Mental health well-being based on the  
24 conditions of the prison, so that we could then bring to the  
25 Court's attention these confinement issues, which is -- well,

1 you have depositions next, but the last issue we will address  
2 today. And I think the psychiatric report has been helpful  
3 to me and Mr. Wahid in understanding what the conditions have  
4 brought, if you will. I think that's where we are.

5 THE COURT: So would you like -- what I hear you  
6 saying is that this evaluation has been helpful and you  
7 wanting to bring to my attention certain things about his  
8 condition that would -- that the evaluation has helped you  
9 determine are recommendations and assistance you would like  
10 from me to change his current circumstances and access and  
11 other specifics?

12 MR. SAMUEL: Precisely.

13 THE COURT: Let's do that now. We will get to the  
14 Rule 15 depositions at the very end.

15 MR. WAHID: Your Honor, the main things that the  
16 evaluation made clear to us is that Mr. Sadequee's isolation  
17 over the last three years have, combined with the way -- the  
18 manner in which he was brought from Bangladesh, have combined  
19 to both traumatize him and to now present substantial  
20 impediments to him in helping prepare his case.

21 He's having difficulty with certain issues that the  
22 psychiatrist felt could be in some way mitigated if he had  
23 more contact. The isolation has created this problem, so the  
24 solution was to have contact visits or more regular contact  
25 visits -- he is getting some contact visits -- more regular



1 contact visits with his family.

2 At the moment I believe he has five video-link  
3 visits with his family per month. If some of those could be  
4 contact visits, or one a month or something of that nature  
5 could be instigated.

6 The increasing of phone --

7 THE COURT: What do you mean by video-link visits?

8 MR. WAHID: He's not actually physically in the  
9 room with his family. His family is in the jail, but they  
10 are in a room watching him on a screen, he's in another room  
11 watching them on a screen.

12 THE COURT: So they are not even in -- they are not  
13 even in the --

14 MR. SAMUEL: If you will, I did it last week just  
15 because they couldn't give me a room, which is another  
16 issue.

17 There is a TV camera -- I sit at a table. There is  
18 a TV camera and headphones. I put the headphones on. There  
19 is a microphone that's hidden somewhere in the device. He  
20 I think is maybe not even on the same floor but somewhere,  
21 I assume he's also looking at a TV because we nod at each  
22 other. He's wearing headphones.

23 And we talk, like a video conferencing that I'm  
24 sure you do in chambers occasionally. But there is no -- you  
25 are just looking at a screen.

1           THE COURT: Is there any facility there where there  
2 is separation but people can at least be present and see each  
3 other through a glass?

4           MR. SAMUEL: There is that, and it's called the SHU  
5 visitation. But that to some extent is even worse because  
6 you can't talk through the glass. I mean, it's solid  
7 something or other.

8           But they do -- they have occasionally provided  
9 contact visits like every other pretrial inmate.

10          THE COURT: Okay.

11          MR. SAMUEL: And what we are asking for -- I'm  
12 going to be a little more generous with us than Mr. Wahid  
13 was -- is twice a month. In other words, every other  
14 visit.

15          Everybody else who goes there gets contact visits,  
16 every other pretrial inmate --

17          THE COURT: How often is the policy to give them  
18 contact visits?

19          MR. SAMUEL: I think it's five times.

20          MR. McBURNEY: No, no.

21          MR. SAMUEL: For us or anybody else?

22          THE COURT: If you were somebody else in pretrial  
23 detention, what's the policy on contact visits?

24          MR. SAMUEL: I thought it was every visit.

25          MR. McBURNEY: Judge, I'm not speaking for BOP, and

1 we will get you an answer as soon as we can ask those  
2 questions.

3 But one important distinction, these ways that the  
4 defense counsel are describing something applying only to  
5 Defendant Sadequee, everyone, everyone charged with a  
6 material support type crime is housed in the same way.

7 I'm not supporting or defending the way Defendant  
8 Sadequee is being housed.

9 THE COURT: I understand that.

10 MR. McBURNEY: So the understanding --

11 THE COURT: Generally how many contact visits does  
12 somebody in pretrial detention have if you are not a material  
13 support defendant?

14 MR. NAHMIAS: Actually, Your Honor, I can say,  
15 because we have to sort out the pretrial facility at the  
16 Bureau of Prisons. In some pretrial facilities, for example,  
17 Paulding County where the two police officers who were just  
18 sentenced last week were held for over a year, they had zero  
19 contact visits for more than a year in custody.

20 THE COURT: Well, that wasn't my case.

21 MR. NAHMIAS: I'm just saying, though, in pretrial  
22 marshal's custody in this district, there are cases --  
23 I mean, the standard for a person in pretrial segregated  
24 conditions is zero. And so we will have to see the SHU  
25 versus the general population pretrial, because I think the

1 standard is very different for people who are being held in  
2 the pretrial SHU versus the pretrial general population. We  
3 can get you that information.

4 But as to people held I know from another trial in  
5 the pretrial segregated scenario, and they were being held in  
6 pretrial because of their status as law enforcement officers  
7 and cooperators, not as material support defendants, they had  
8 no family contact for more than a year.

9 THE COURT: Well, let me ask you this. If he was  
10 convicted and assigned to a prison, wouldn't he have contact  
11 visits?

12 MR. NAHMIAS: The status is, yes, that after -- and  
13 the status is in most facilities -- it depends where the  
14 Bureau of Prisons puts him. It would not be the case if he  
15 were assigned at ADMAX, it would not be the case I think in  
16 some of the parts of the facility in Terre Haute where there  
17 are a number of material support defendants. It is the  
18 standard practice for people in general population, but it is  
19 not the standard for pretrial.

20 That may seem kind of counter-intuitive because  
21 pretrial conditions should maybe be better, but that is not  
22 the standard --

23 THE COURT: Well, that's not the BOP standard and  
24 it's not the Marshal Service standard, but I'm the Court and  
25 we are going to impose what I think is the appropriate

1 standard.

2 And what I want you to do is I want you to  
3 investigate how we can increase contact visits.

4 MR. NAHMIAS: Okay. And just to be clear about the  
5 different levels, there are these video links, there are the  
6 face-to-face but through glass visits, and there are the kind  
7 of literal contact visits with -- and I believe for attorneys  
8 they can have contact visits, I mean, depending on logistics,  
9 but they have unlimited.

10 The question is, just so we are clear, the Court is  
11 interested in family actual physical contact visits?

12 THE COURT: Well, that's the issue that we are  
13 talking about right now.

14 MR. NAHMIAS: Okay.

15 THE COURT: And I want more contact visits. And  
16 I want you to discuss amongst yourselves what meets the needs  
17 of both parties so that more of that happens.

18 MR. NAHMIAS: Be happy to.

19 THE COURT: The second issue is I want him to be  
20 able to talk to his lawyers. In this kind of case which the  
21 government has poured enormous resources in, he has a right  
22 to have private conversations with his lawyers on a  
23 reasonable schedule, and apparently that's not happening.

24 MR. McBURNEY: Let's hear about that.

25 MR. SAMUEL: Let me explain -- and I will do it as

1       quick as I can.

2               Since the assault back in October, the Bureau of  
3       Prisons' position is he can never be in the visitation room  
4       with anybody else. It's him or nobody. You know what I  
5       mean, he's got to be by himself if he's brought down.

6               The way the prison works is on five days of the  
7       week, I believe, people come and visit pretrial inmates. It  
8       is very hard for a lawyer to get in there on some day when  
9       there is not other visitors there.

10              THE COURT: Right. So what you are saying as a  
11       practical matter, that because the Bureau of Prisons wasn't  
12       able to protect him against this assault, that they have  
13       enacted a policy that as a practical matter prohibits him  
14       from having the same rights as other pretrial detainees  
15       because they have imposed this artificial, arbitrary and  
16       capricious rule that they have to be -- he has to be alone.

17              So the solution will be that they have got to find  
18       time when he can be alone and so that those -- that those  
19       meetings can be facilitated. If that's what they believe is  
20       required, they will find a way for that to happen so that his  
21       contact with his lawyer is not abated. And you need to work  
22       that out.

23              MR. WAHID: Your Honor, on that same general issue,  
24       Mr. Sadequee has been trying to make calls to his attorneys,  
25       and he's finding there is no easy way to get that done.

1           And it may be in part because of some sanctions  
2     against him, but my understanding was that should not apply  
3     to legal calls. He had at one point asked for a legal call  
4     and didn't get it until three weeks later. His attorneys  
5     were expecting a call and it didn't come.

6           THE COURT: Look, I understand your complaint.  
7     There is a way, because the prison has done this in a  
8     previous case, to accommodate him, to allow him to make more  
9     frequent calls as he gets ready for trial to his lawyers.  
10    And I will go back and look at the arrangement that I made  
11    for this other defendant, and we will make the same  
12    arrangement here. But I'm not going to impede his ability to  
13    exercise his right to counsel.

14           But, Mr. Sadequee, if you break the rules, you are  
15    going to be held accountable for that. And the one thing I  
16    will not do is require the Bureau of Prisons, even if -- and  
17    I understand that you were making three-way calls. If you  
18    know that that's not permitted, even if your desire to make  
19    three-way calls was because you wanted to talk with a  
20    particular person, which I guess is your wife, if you are not  
21    allowed to do that, you can't do that.

22           Because everybody else that wants to make three-way  
23    calls to call family members, if they have to abide by that  
24    rule, so do you. And whatever consequence they suffer, you  
25    will suffer too.

1           MR. WAHID: Which actually brings up another point,  
2 Judge, which is one of the recommendations that the  
3 psychiatrist did make was to have some mechanism to have some  
4 contact with his wife. They were married a very brief amount  
5 of time before he was taken from there.

6           So I'm not sure if there is any mechanism to do  
7 that, but that was definitely one of the things that was  
8 recommended to us. One of the suggestions was three-way call  
9 through the attorney to his wife in Bangladesh.

10          THE COURT: Well, if you can propose some way that  
11 gives the prison assurance that -- right now the process that  
12 I understand that Mr. Sadequee was using had potential for  
13 mischief. But if there is some way that he can contact,  
14 which would not incur any other financial obligation on  
15 behalf of the prison because he wants to make a call  
16 overseas, which I guess is what he wants to do, and they can  
17 be assured that somebody is monitoring that call, whether  
18 it's you or somebody else, then I would propose that to the  
19 government to see if they can't work that out with the Bureau  
20 of Prisons.

21          But it's got to be reasonable, it's got to be in a  
22 way that doesn't cause the BOP to incur an expense that they  
23 would not otherwise incur for other people.

24          And if you can't resolve that, let me know, and I  
25 will see if I can resolve it.



1           MR. WAHID: I think the final issue was access to  
2 review his discovery.

3           We have a number of items that are on CD. There is  
4 a computer in the prison that we have used on a couple of  
5 occasions, but it's generally not working. It has not worked  
6 for the last few months I have been there.

7           My understanding is that --

8           THE COURT: Wait a second, one second. Is it true  
9 that there is a computer at the prison that is supposed to be  
10 available to inmates that doesn't work?

11          MR. McBURNEY: That's not -- we learned about this  
12 today. I'm not disagreeing with them. I don't have an  
13 answer. They brought that up today when we were preparing  
14 for this session.

15          THE COURT: Well, could you find out whether in  
16 fact they make available a computer that is really not  
17 available?

18          MR. McBURNEY: Right.

19          MR. SAMUEL: It's in the attorneys room. It's been  
20 months since it's worked. It works one day and then -- BOP  
21 knows that.

22          MR. WAHID: Last time we were there, we did ask  
23 them, and they said they were waiting on some part, and they  
24 had been waiting for some time.

25          MR. McBURNEY: We will get you an answer, and it

1 may be action needs to be taken. I don't know the answer.

2 We also will look at other means for both  
3 defendants -- I recognize that this is a hearing for  
4 Defendant Sadequee, but Defendant Ahmed has the same need and  
5 right to review -- it's a discovery-intensive case. Most of  
6 it is on disks, it's not paper. We would try to do the same  
7 for Defendant Ahmed.

8 I understand the Court's desire --

9 THE COURT: There is a computer, and they have done  
10 this in the past, to allow an inmate that's in pretrial  
11 detention to review it in the library.

12 MR. MCBURNEY: Yes, that's precisely my  
13 understanding.

14 THE COURT: I'm trusting that you are going to look  
15 into a solution to this problem that should not be a problem.

16 MR. MCBURNEY: Correct. I have an overall response  
17 when they are done, but, yes.

18 MR. WAHID: And in all candor, Judge, Mr. McBurney  
19 and the government have actually been working with us as we  
20 have been going along and they have been more than  
21 cooperative with us. So I'm not suggesting anything of them.

22 THE COURT: I know that. But even the government  
23 sometimes gets frustrated with --

24 MR. WAHID: So there is a need --

25 THE COURT: -- the policies and procedures at the

1 pretrial detention at the Atlanta Penitentiary.

2 MR. WAHID: There is a need generally for him to  
3 review those CDs. We are coming up pretty close, and we  
4 really need to have him start going through those.

5 THE COURT: I know.

6 Mr. McBurney, can you report to me by the end of  
7 the week on -- I mean, it seems to me that that ought to be  
8 something that we ought to be able to fix quickly. Could you  
9 at least give me a status report on whether we could --  
10 because those things are -- you know, we are getting close to  
11 trial. These are things that he needs. He needs to talk to  
12 his lawyer, he needs to review evidence to prepare for trial,  
13 and we need to resolve that sooner rather than later.

14 MR. McBURNEY: Agreed, and by the end of the week,  
15 yes.

16 THE COURT: Thank you.

17 MR. WAHID: The final issue was there were some  
18 items seized from him. Now, he has a lot of legal material  
19 that because he could not get it on CD we printed it out and  
20 would give it to him. It's somewhat voluminous, so he has a  
21 lot of material.

22 I believe his cell -- I think he changes cells very  
23 quickly or they move him around once a month or something.

24 During the process some items get seized from  
25 him. Some items that get seized are sometimes his notes that

1 he's making.

2 We would either like them back, or they should be  
3 preserved in some safe place that prevents that information  
4 from becoming either public or have access to the  
5 government's attorneys.

6 THE COURT: Here is what I would propose on  
7 that. Are these notes in English?

8 MR. WAHID: Yes.

9 THE COURT: I want you to look into that,  
10 Mr. McBurney. And if in fact the Bureau of Prisons is taking  
11 notes that he's made and you want me to, I will do an  
12 *in camera* inspection of those notes to see under what grounds  
13 the Bureau of Prisons could be seizing his personal notes on  
14 materials that you are now representing to me he's doing in  
15 preparation for trial.

16 Because then I'm going to ask the Bureau of Prisons  
17 under what authority they are doing that.

18 MR. WAHID: Thank you. And I think that -- he has  
19 an issue that I would like us to discuss before we raise it  
20 here in court because we haven't raised it before. So I'm  
21 going to ask him to not have me raise it at this point and  
22 let me do that.

23 If he wishes to on his own raise it, he could raise  
24 it right now.

25 There was one last issue that I did just see on his

1 notes which was commissary. Because he's in the SHU, he does  
2 not -- the commissary that's in the SHU is extremely limited  
3 whereby the commissary for pretrial detainees, for everybody  
4 else, is much more extensive.

5 He has issues where he's not able to sometimes get  
6 access to things that he would want. He feels it's unfairly  
7 punitive to him, and that that was one of the issues.

8 And the other one was that the walls of his  
9 cells --

10 THE COURT: Well, let's start with the  
11 commissary. He needs to provide a list of things that he  
12 would like to Mr. McBurney, and if they are things that are  
13 available in the commissary, that for some reason the Bureau  
14 of Prisons doesn't facilitate him getting out to the  
15 commissary and forces him to use this other one, do you think  
16 you could arrange to help him get those out of the main  
17 commissary?

18 MR. McBURNEY: We certainly would look into it,  
19 assuming it's not a security issue or anything like that.

20 THE COURT: I understand.

21 MR. McBURNEY: And this is a discussion that we  
22 have had. And again I will address some of these with the  
23 Court when they are done with their list of items.

24 THE COURT: But what I would like to see is, you  
25 know, I think one of the problems here is we get a little bit

1     these -- there are things there that he wants. We need to  
2     start saying what is it specifically and put it in writing  
3     what you want rather than making these general complaints.

4             Because I can deal with specifics. What I can't  
5     deal with, because I don't know what's in the limited  
6     commissary and I don't know what's in the main commissary,  
7     but it seems that if I can review -- if it's necessary for me  
8     ultimately to review what the specific request is because  
9     it's been in writing and given to the government and the  
10    government says that they can't do it, then I could look at  
11    it and make a decision on whether or not the request was  
12    reasonable and whether the response was reasonable.

13            And if I have to, I will be the arbiter of whether  
14    something is reasonable and get something delivered that  
15    seems to me a reasonable request that was unreasonably  
16    denied.

17            MR. WAHID: Agreed, we can get you a list.

18            THE COURT: Okay.

19            MR. WAHID: The last item was that -- and I'm not  
20    sure if it's in the cell he's in this month, but he's had an  
21    ongoing complaint that the cell that he was placed in had a  
22    lot of graffiti --

23            MR. SAMUEL: It's been taken care of.

24            MR. WAHID: -- pornography on the wall.

25            Okay. It's my understanding he's not in that cell

1 anymore. But that was an issue; it's not an issue anymore.

2 Okay. Thank you.

3 THE COURT: All right. On these issues about these  
4 concerns about the conditions, is there anything else we need  
5 to discuss from the government's perspective?

6 MR. McBURNEY: Only one, Judge. And I will  
7 certainly make all the inquiries you have directed me to  
8 make. I will report back to the Court whatever I have  
9 learned or resolved by the end of this week.

10 Several of the items about which the defendant is  
11 complaining are -- and you have alluded to this, but some of  
12 them are the product of his own acts.

13 We don't need to get into lots of details, but he's  
14 been written up several times for three-way calls and for  
15 obstructing the movement of his door, jamming items in the  
16 door so the cell wouldn't open when the officers are trying  
17 to take him out. Those are reasons why his items are  
18 seized.

19 All inmates in the SHU move every 21 days, standard  
20 procedure, every single one of them, pretrial or not. Not  
21 all inmates jam the doors.

22 When that happened I heard right away from  
23 Mr. Samuel: Wait, my client's goods were taken from him.  
24 Why does he not have his goods?

25 I called right away BOP: Why does

1 Defendant Sadequee not have his stuff?

2           They sent the report: He rolled up a magazine and  
3 stuck it to jam the door. For whatever reason, good or bad,  
4 that's not something he's supposed to do.

5           The response was he doesn't have paper in his cell  
6 anymore for a while so he doesn't do something like that.

7           So I'm unaware, but I will inquire that they are  
8 randomly seizing notes or a radio or items in other than a  
9 legitimate reaction to documented misconduct on his part.

10           Infractions, not marijuana or a shank or anything  
11 like that, but the three-way calls, the blocking of the door.  
12 And he may have his own justification for that because of the  
13 incident; nonetheless, it's a violation, and the BOP per  
14 their own regulations were taking some of these items. I  
15 will find out if they still have anything and, if so, why.

16           I do know that as a result of either the second or  
17 third write-up for three-way calls there are some sanctions  
18 still in place. The first time he was written up, they  
19 agreed to waive the sanctions, in part at our request because  
20 it seemed to impede with visits with family, et cetera.

21           So the conditions are not ideal, he's been in  
22 custody for a long time, it's pretrial, not  
23 postconviction. We will continue to work with the defense,  
24 and we will turn to the Court if we can't get answers that we  
25 think are reasonable.



1           But I want the Court to understand that the BOP has  
2       been extremely responsive to our requests when we are  
3       notified by the defense. We are hearing about certain things  
4       for the first time right now, and I hope in the future we  
5       could work before we need to get the Court involved.

6           THE COURT: Thank you. I mean, that's why we need  
7       to -- I want to make it clear that if you have got a  
8       complaint, I want a record of it, I want a communication with  
9       the government, because I am going to give them first  
10      opportunity to correct it.

11          But if it's not corrected and somebody believes it  
12      has to be brought to me, I'm not going to deal with  
13      generalities and vague descriptions. I'm going to be able to  
14      say here is what you said didn't happen, this is what their  
15      response was, so that I will have a fixed record of what the  
16      complaint is, what the response was, so that I can decide  
17      it.

18          But we are going to move from these general late  
19      complaints and put into process a procedure whereby if you  
20      have a concern, it's addressed in writing to the government,  
21      the government gets to try to resolve it, and if they can't,  
22      I am always available to you to resolve these things. We can  
23      do it by telephone or we can do it in a meeting.

24          But my guess is that whenever I put something like  
25      this into place, you don't have to come to me because now

1 everybody understands what the complaint is and what the  
2 proper response is, and you work it out and we don't have  
3 these little irritations that people apparently are having.

4 So I would encourage you to follow up on the  
5 process we talked about today.

6 MR. WAHID: Absolutely, Your Honor.

7 THE DEFENDANT: I also would like to request to be  
8 allowed to have interviews with the media or contact with --  
9 media interviews, if that would be possible?

10 THE COURT: If you would like to request that, put  
11 it in writing and I will consider it. I will give the  
12 government a chance to respond. I don't know what the law is  
13 on that.

14 When were you told of this hearing?

15 THE DEFENDANT: Last week.

16 THE COURT: Well, you have the ability when there  
17 is a hearing scheduled to send me a letter telling me what  
18 you want to address.

19 In the future if we have a hearing or you want a  
20 hearing to address something, send it to me in writing.  
21 Please don't bring them up like you have today, issues that I  
22 have no knowledge about, that the government obviously  
23 doesn't have any knowledge about, because I can't prepare to  
24 address issues when they are brought up in this manner.

25 The reason why we are having this hearing is

1 because you wrote, and within a very short period of time  
2 I scheduled this. So we are extremely responsive in this  
3 case at all levels. You have my full and undivided  
4 attention.

5 But your obligation to me is to let me know what it  
6 is and let me know in writing so that I can do my job, which  
7 is to understand the issue, understand the law as it applies  
8 to that issue, rather than asking me in an open forum like  
9 this to address issues about which I have no background nor  
10 preparation nor proper response because I don't know anything  
11 about it. And that's what you owe me.

12 THE DEFENDANT: Thank you.

13 THE COURT: You are welcome.

14 Rule 15 depositions?

15 MR. WAHID: Your Honor, I gave a short update to  
16 Mr. McBurney earlier today. Essentially there were three  
17 categories of witnesses in the sense of three different  
18 nations in which they reside: Canada, U.K. and Pakistan.

19 The easiest one, starting with Pakistan, we are  
20 going to withdraw our request to depose those witnesses,  
21 which were the leaders of LET.

22 The Canadian witnesses, we are going to withdraw  
23 our request to depose the two that are in custody that I have  
24 listed. We have Mr. Sadequee's aunt, Manzu Huq, who is  
25 prepared to come. I simply have to get the proper

1 information to Mr. McBurney for the travel, but she's a  
2 Canadian citizen is my understanding. It shouldn't be a  
3 problem.

4 The ones I have spent most of my time on are the  
5 two individuals in custody in the United Kingdom,  
6 Mr. Ahbid Khan and Younis Tsouli. I have through Mr. Khan's  
7 attorney got permission to go speak to Mr. Khan, and  
8 Mr. Samuel and I just have to go do that as quickly as we  
9 can.

10 Mr. Tsouli has been notified that we wish to speak  
11 to him. We haven't -- that attorney, his attorney has not  
12 heard back from him yet, has sent him a follow-up letter, and  
13 in a conversation recently suggested that if we are already  
14 going to be there, that we may just want to arrange to go to  
15 the jail and if he talks to us, he talks to us, if he  
16 doesn't, he doesn't. So that may be the quickest way to  
17 resolve that issue.

18 And in relation to those -- there were transcripts  
19 of Mr. Khan's trial. I know that Mr. McBurney had expressed  
20 an interest at some point that he would be interested in also  
21 seeing if we were to order it, so I mentioned that to him  
22 today that we actually placed an order. At some point we  
23 have to deal with paying for it, so we might want to  
24 cooperate on dealing with that and get that transcript.

25 Mr. Tsouli, we haven't been able to track down as

1 to how to get that. If we do, then I will address that issue  
2 as well.

3 THE COURT: It sounds to me like there is good  
4 communication on those issues and that that's a report, that  
5 there is really nothing for me to help you with, but that I  
6 know that if you do need my help, that you will approach me.

7 MR. McBURNEY: The only point of clarification I  
8 have, I thought there were four Canadian witnesses: Ms. Huq,  
9 Jahmaal James, Fahim Ahmed and Mubin Shaikh.

10 So there is one you didn't refer to, and I need to  
11 know the status of that.

12 MR. WAHID: We are withdrawing all three who were  
13 arrested in Canada. Just two are in custody, one was not in  
14 custody. But having -- we are withdrawing those three  
15 names. So the only --

16 THE COURT: So there is only one Canadian?

17 MR. WAHID: Manzu Huq.

18 MR. McBURNEY: Just to complete the report from the  
19 government's side, all signs that we get from the State  
20 Department as well as law enforcement is that getting a visa  
21 for Ms. Huq, if she even needs one, should be easy.

22 And he left, but I will give you the Ahmed  
23 side. They have two Pakistani nationals that they have  
24 requested, and the same green light. Currently there appear  
25 to be no obstacles to get them the appropriate visas. They

1 have given us all of the identifying information we need.

2 And so it's simply get to the consulate and there  
3 should be no problem for Mr. Martin's two Rule 15 witnesses  
4 to actually be here to testify rather than be deposed.

5 THE COURT: Are they family members?

6 MR. MCBURNEY: I believe that one is a cousin and  
7 the other is somewhat of a religious or spiritual advisor  
8 that Defendant Ahmed met while in Pakistan. But they  
9 wouldn't be deposed; they would actually be here for trial to  
10 testify, much like Ms. Huq would be if that's the course the  
11 defense takes.

12 THE COURT: Okay, that's helpful.

13 Well, that's all I had on my list. Is there  
14 anything else that the government wants to bring up?

15 MR. MCBURNEY: No, sir.

16 THE COURT: Mr. Samuel?

17 MR. SAMUEL: No, Your Honor. Thank you.

18 THE COURT: Mr. Wahid?

19 MR. WAHID: Thank you.

20 THE COURT: All right. Then we will be in  
21 recess. Thank you.

22 (Proceedings adjourn at 4:50 p.m.)  
23  
24  
25

## C E R T I F I C A T E

UNITED STATES OF AMERICA :  
:  
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify that the foregoing 63 pages constitute a true transcript of proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 5th day of March, 2009.

*/s/ Nicholas A. Marrone*

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NICHOLAS A. MARRONE, RMR, CRR  
Registered Merit Reporter  
Certified Realtime Reporter  
Official Court Reporter  
Northern District of Georgia